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EXTRAORDINARY

PART II—Section 3

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No. 27] NEW DELHI, TUESDAY, JANUARY 27, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 27th January 1953

S.R.O. 218.—WHEREAS the election of Shri Bhavanishanker Padmanabh Divgi of 235-I Tardeo Road, without the Fort, Bombay, as a member of the Legislative Assembly of Bombay, from the Umerkhadi-Dongri-Wadibunder constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Moinuddin Burhanuddin Harris of Connaught Road, without the Fort, Bombay;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT BOMBAY.

ELECTION PETITION No. 76 OF 1952

In the matter of the Representation of the People Act.

AND

In the matter of the Election Petition presented thereunder by Moinuddin Burhanuddin Harris.

Moinuddin Burhanuddin Harris of Bombay, Inhabitant residing at Connaught Road without the Fort of Bombay—*Petitioner*

Versus

1. Bhavanishanker Padmanabh Divgi, of Bombay, Inhabitant residing at 235-I Tardeo Road without the Fort of Bombay.

2. Noorali Shakur Patel, of Bombay, Inhabitant residing at 60 Kandawadi Scheme, Bandra without the Fort of Bombay.

3. Mahadev Sadashiv Ghag, of Bombay, Inhabitant residing at 82, Jail Road East without the Fort of Bombay—*Respondents.*

CORAM:—Shri N. J. Wadia, *Chairman* of the Tribunal; and Shri M. D. Lalkaka, and Shri G. P. Murdeshwar—*Members.*

Mr. H. R. Pardiwalla, instructed by Messrs. Hooseni Doctor and Co., Solicitors, with Mr. S. S. Kavlekar for—petitioner.

Mr. T. R. Kapadia with Mr. U. S. Hattangadi, and Mr. K. K. Shah for respondent No. 1.

Respondents Nos. 2 and 3 absent

JUDGMENT

The petitioner, Shri Moinuddin B. Harris was a candidate for election to the Bombay State Legislative Assembly from the Umarkhadi-Dongri-Wadi Bunder Constituency of the City of Bombay, on the 3rd of January, 1952. The first respondent, Dr. B. P. Divgi was declared duly elected, he having secured 13,711 votes. The petitioner secured 13,162 votes. The petitioner is a member of the Socialist Party. The successful candidate is a member of the Congress Party.

The main grounds on which the petitioner challenges the validity of the election generally or the validity of the election of the first respondent are:

(1) That the respondent No. 1 and/or his agents, canvassers, employees or supporters, extensively practised undue influence and other corrupt practices in furtherance of the candidature of respondent No. 1.

(2) That the respondent No. 1 and/or his agents, canvassers, employees or supporters made a systematic appeal to the voters to vote for respondent No. 1. and to refrain from voting for the petitioner, on the ground that the petitioner belonged to the Socialist Party, which did not believe in religion, that the petitioner himself had opposed the teaching of the Koran in the municipal schools, and that if he were elected he would use his position and influence to stop the teaching of the Koran in the municipal schools.

(3) That the respondent No. 1 and/or his agents, canvassers, employees and supporters exhibited posters, badges and paintings, and carried on other propaganda in favour of respondent No. 1, within the prohibited distance from the polling booths.

(4) That the poll was not taken during the hours published by the appropriat authority, that at several polling stations the polling commenced much later than the notified time of 8 A.M. and closed much later than the notified time of 6 P.M

(5) That the ink provided for marking the left hand finger of the voters, which was supposed to be indelible, was not in fact indelible, and this facilitated impersonation on a very large scale.

Certain other minor irregularities were also alleged such as failure on the par of the Returning Officer to compare the serial numbers of the ballot papers found in the boxes of each polling booth with the serial numbers of the ballot paper issued in that particular booth.

Respondents Nos. 2 and 3 have remained absent throughout and the petitione claims no relief against them.

The first respondent contended *inter alia* that the late starting and the late closing of the ballot at some of the polling stations did not materially affect th result of the election, and that in any case it affected the petitioner and the respondent equally. He denied that any appreciable number of voters had gone away without voting because of the late opening of the ballot. He also denied th allegation that the ink used for marking the fingers of the voters was not indelible, or that impersonation had been facilitated in any way because the ink wa not indelible. He stated that there had not been any contravention of rule 47(c of the Representation of the People (Conduct of Elections and Election Petitions Rules, 1951. He denied the allegations of undue influence and corrupt practice alleged against him and/or his agents, canvassers, employees and supporters.

The questions that we have to decide are:—

(1) Whether the polling commenced and closed at the times mentioned i exhibit A of the petition. If so whether the extension of the closin time of the poll was lawful or otherwise, and in any case whethe the late commencement of the poll and the extension of the pollin time materially affected the result of the election.

(2) Whether the ink provided for marking the left hand fingers of th voters was not indelible as alleged in para. 4 of the petition, and i so whether there was any contravention of sub-rule (1) of rule (22 of the Representation of the People (Conduct of Elections and Elec tion Petitions) Rules, 1951, and whether in any case such contra vention if any had materially affected the result of the election.

(3) Whether there was any contravention of rule 47(c) of the rules made under the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, and if so whether there was any improper acceptance of invalid votes, and in any case whether the contravention of rule 47(c) materially affected the result of the election.

(4) Whether the respondent No. 1 and/or his agents, canvassers, employees and supporters with his and/or their knowledge and/or connivance were guilty of the corrupt practices mentioned in paras., 7, a, b, c, d and e of the petition in the particular B attached to the petition, and the further particulars mentioned in the petitioner's affidavit of the 21st August, 1952.

It is not disputed that at twelve of the polling stations, nine of which are mentioned in exhibit A to the petition, polling started later than 8 A.M. and closed later than 6 P.M. At some of these polling stations polling started as late as 9-30 A.M., an hour and a half after the fixed time, and closed as late as 7-30 P.M., an hour and a half after the time fixed for closing.

Mr. Dalal, who was the Chief Election Officer in Bombay at the time of the elections, has admitted that the polling started late in many constituencies, and that orders were issued to the Returning Officers to extend the time of polling at such polling stations to the extent to which the polling had started late. The late starting of the poll was due to the delay caused in the distribution of the voting material and papers. The fact that the polling started later than the published time of 8 A.M., commencing in some polling stations even as late as 9-30 A.M., would still allow the minimum voting period of 8 hours required by section 56, of the Act without extension of the closing time. Section 56, however, requires that the hours fixed for the poll shall be fixed by the appropriate authority, that is the State Government, and the hours so fixed shall be published in the Official Gazette and in such other manner as the Election Commission may direct. There is no provision in the Act or the Rules which authorizes the Government to extend the time of polling beyond that originally fixed. Section 57 which provides for the adjournment of the poll in certain emergencies to another date could not be availed of to extend the hours of polling on the day originally fixed. It appears from the evidence of Mr. Dalal that the Election Commission had directed that the hours of polling, besides being announced in the Official Gazette, should be published in certain other ways, namely (1) by the issue of a formal press note by the State Government, (2) by radio announcements, (3) by notices at the offices of every District Magistrate, Sub-Divisional Officer, District Municipalities, Police Stations, Post Offices, Municipal Offices and in the offices of such other Local Self Government Bodies as the Chief Electoral Officer may specify and (4) by beat of drum.

It is admitted that in this case the extension of the hours of polling was not published in any of those ways. There was no time for publication in the Official Gazette, and publication was not made in any other way, either. All that could be done was to notify the Presiding Officers at the different Polling Stations that the time had been extended.

We must, therefore, hold that the extension of the polling hours was not legal, and also that the fact that the time had been extended was not published for the information of the candidates and voters as required by the Act and Rules. Section 100(2)(c) provides that if the Tribunal is of the opinion that the result of the election has been materially affected by any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act, it shall declare the election of the returned candidate to be void. It is clear from this that the mere improper reception of a vote or non-compliance with the provisions of the Constitution or of the Act or of the rules would not by itself entitle the Tribunal to declare the election of the returned candidate to be void. It must further be satisfied that the result of the election has been materially affected by such improper reception or non-compliance. The petitioner has not been able to adduce any evidence which would justify us in holding that the keeping open of the polling at the 12 polling stations mentioned above beyond the fixed time of 6 P.M., had materially affected the result, nor is there any satisfactory evidence to show that any appreciable number of persons went away without voting because of the late starting of the polls. It is true that some of the petitioner's witnesses have stated that as many as 100 to 150 persons went away without voting because of the late opening of the polling booths. We are not, however, prepared to accept this evidence as proving very much. Apart from the fact that the evidence is very vague and unreliable, we have to bear in mind that many of those who may have gone away in the morning because the polling booth was

opened late, may have returned later on in the day to record their votes, and this was all the more likely since the polling hours were extended. It was only at 5 or 6 polling stations that the poll started an hour and a half late At some of the 12 polling stations it started only 5 to 15 minute later than the published time. We are not, therefore, prepared to hold that the late starting of the poll or the keeping open of the ballot beyond the closing hours originally fixed materially affected the result of the election.

Some evidence has been led to show that the ink provided for marking the left forefinger of the voters was not indelible. Petitioner has stated that he heard from some people that the ink mark was removable, and he removed his own mark with a piece of charcoal 2 days after the voting had taken place. From the evidence of Mr. Dalal, the Chief Election Officer, it appears that the ink used for marking the voters was prepared by the Department of Scientific and Industrial Research in Delhi, and was used at the elections throughout the whole of India. The evidence adduced by the petitioner is in our opinion extremely meagre and absolutely insufficient to prove the sweeping allegation made by him that the mark made was easily removable, that it was so removed in many cases, and that a great deal of impersonation took place. Petitioner's own statement shows that the mark was not easily removable. It remained on his fingers next day in spite of the fact that he must have washed his hand several times during the 48 hours and even then it was removed only by using a piece of charcoal. It could not have been the intention of the authorities that the mark made should not be removable even after some days The only object was that the mark should not be easily removable on the same day, and this purpose appears, according to the petitioner's own evidence, to have been served. No evidence whatever has been led to show that persons who had been marked with the ink once and had voted, had afterwards removed the mark and voted again Mere vague allegations that such cases had occurred cannot be accepted as proving that the ink was not indelible and that impersonation had occurred on that account.

One of the grounds on which the validity of the election has been challenged is that at the time of counting the votes the Returning Officers failed to compare the serial numbers of the ballot papers found in the boxes of each polling booth with the serial numbers of the ballot papers issued thereat. Rule 47(1) (c) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, requires that a ballot paper contained in a ballot box shall be rejected if it bears any serial number or mark different from the serial number or mark of the ballot papers authorized for use at the polling station or polling booth at which the ballot box in which it was found was used. No evidence whatever has been led before us on this point, and there is nothing to show that voting papers were found in any ballot box bearing numbers not assigned to the polling station or booth at which the box was used. This objection was not pressed during the arguments.

It has been alleged by the petitioner that voters who belonged to the Bohra Community were told at several meetings that the Mullaji Saheb had issued a firman directing that Bohras should support the Congress candidate. Witnesses examined on behalf of the first respondent have denied that any such statement was made by Yusufbhai Saheb, the son of the Mullaji Saheb who was present and spoke at one of the meetings, or by Bandukwalla who spoke at two of such meetings. It was open to the Mullaji Saheb to advise his followers to support Congress candidates, if he thought that that was the best course for his community to follow under the circumstances. So long as this was mere advice given to his followers and not an order issued to them as the religious head of the community with any religious sanction attached to it, it would not amount to the exercise of undue influence.

In England the law under which elections can be avoided has been the Common Law of Parliament and in later years the same law subject to various statutory provisions which were enacted from time to time. That law has been authoritatively stated by Lord Coleridge C. J., in delivering the judgment of the Court in Woodward *v.* Sarsons (1875) L.R. 10 C.P. 733 at pages 743-44 as follows:—

"An election is to be declared void by the Common Law applicable to Parliamentary elections, if it was so conducted that the Tribunal which is asked to avoid it is satisfied as a matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. As to the first, the Tribunal should be so satisfied, *i.e.*, that there was no real electing by the constituency at all, if it were proved to its satisfaction that the Constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so if a majority

of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as, by polling stations being demolished, or not opened, or by other of the means of voting according to law not being supplied, or supplied with such errors as to render the voting by means of them void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think the same result should follow, if by reason of any such or similar mishaps, the tribunal without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But, if the Tribunal should only be satisfied that certain of such mishaps had occurred but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the Tribunal to declare the election void by the common law of Parliament." In referring to section 13 of the Ballot Act [which has now been replaced by section 16(2) of the Representation of the People Act, 1949] and which provided that no election should be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to that Act or any mistake in the use of the forms in the Second Schedule, if it appeared to the Tribunal that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election, the same learned Judge observes at pages 750-51; "It is said that section 13, though it is in a negative form, assumes as an affirmative proposition that a non-compliance with the rules, or any mistake in the use of the forms, would render an election invalid unless it appeared that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election. If this proposition be closely examined, it will be found to be equivalent to this that the non observance of the rules or forms which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principles of an election by ballot, and must be so great as to satisfy the Tribunal that it did affect or might have affected the majority of the voters, or, in other words, the result of the election. It, therefore, is as has been said, an enactment *ex-abundanti coutela* declaring that to be the law applicable to elections under the Ballot Act which would have been the law to be applied if this section had not existed."

Even in England it may be said as a general rule that to whatever extent the provisions of an Act of Parliament are violated, even wilfully, which does not enact that the consequences of those acts avoid the election, the election will not be invalidated: *vide* Rogers on Elections, 20th ed Vol. II, p. 166. In such cases, however, according to the authorities, the onus rests on the respondent of proving that the result of the election, *i.e.*, the success of the one candidate over the other, and not merely the amount of the majority, was not, and could not be affected: *ibid* p. 168 and Islington (1901) (5 O'm, and H. 130).

So far as the law in India relating to elections to the Legislatures is concerned, article 329(b) of the Constitution of India provides that no election to the Legislature shall be called in question except by an election petition presented to the authority and in the manner provided under any law made by the appropriate legislature. Section 80 of the Representation of the People Act, 1951, which governs elections to the Legislature, provides that no election shall be called in question except by an election petition presented in accordance with Chapter II of the Act, and under section 81 such petition can be presented only on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101 of the Act. It is thus not permissible in the case of elections to the Indian Legislatures for any election Tribunal to go beyond the provisions strictly prescribed by those sections or have recourse to any principles of law outside these provisions, or as prevailing in England under the common law of Parliament, as is possible in the case of municipal elections governed by the Bombay Municipal Corporation Act, in section 33, whereof provision has been made in this respect in very wide terms of allowing election petitions to be presented on the ground of a dispute as to the qualifications of a person to be elected or the improper rejection of a nomination or the improper reception or refusal of a vote or for any other cause.

As we have observed in disposing of a previous election petition, there is a material difference between the English Law on the subject and the law which prevails in this country with regard to elections to legislatures. Under the Indian law if a petitioner has to bring his case within the provisions of section 100(2) (c),

mere proof of non-compliance with even the mandatory provisions of the Constitution or of the Representation of the People Act is not enough, even though such non-compliance or gross irregularity may possibly have affected the result of the election. The provisions of section 100(2)(c) require the petitioner to prove that the result has been materially affected by such non-compliance or irregularity, while under the English law an election tribunal would be justified in setting aside the election if it were satisfied that there was a likelihood that the result of the election may have been affected by the non-compliance or the irregularity vide the decisions of the election Tribunals in Malik Barkatalli v. Moulvi Mohamadaly [illegible], Chisti and Chaudhari Amarsingh vs. Pandit Nanak Chand [illegible] Election cases pp. 469, 473 and 219, 221; and Shrivastava's Indian elections [illegible] Election Petitions Vol. II p. 214. This difference arises from the [illegible] section 100 of the words "the result of the election has been materially affected" in a cold positive form, instead of the words "such non-compliance or mistake [illegible] the result of the election" as were used in section 13 of the Ballot Act [illegible] have now been replaced by the words "that the Act or omission did not affect [illegible] result" in section 16(3) of the Representation of the People Act of 1949. In [illegible] ing these provisions in the negative form, the English legislature seems [illegible] followed the practice which prevailed in applying the common law of [illegible] to such matters previous to such enactments. In India however, in spite [illegible] fact that this material difference in the election law as prevailing in England [illegible] in this country was specifically noted by election tribunals so long ago as 1921, in the cases to which we have previously made reference, the Indian Legislature, having the English legislation before it, has considered it fit to enact even the subsequent legislation by repeating the same provisions which existed in the previous Indian legislation. The words in the positive form as used by our legislature in Section 100 are such that it is almost impossible for us without doing serious violence to the language to convert them into a negative provision, such as has existed in England, which alone would justify the onus being thrown on the respondent to show that the non-compliance with the law or the irregularities charged had not affected the result of the election. To do any such violence to the language used in section 100 would not be in consonance with the canons of construction which have normally to be applied in the interpretation of statutes. (Vide Maxwell: Interpretation of Statutes, 9th ed. pp. 3—6).

In the present case the words used by the legislature appear to be plain and not to admit of any other meaning so as to leave no option to the Tribunal to interpret them, although we realize that in some cases such literal interpretation of the words would lead to great difficulties and anomalies. Thus, for example, even if there is a serious breakdown in the election machinery at the time of a particular election, it may still be argued that the aggrieved candidate must prove positively that the result of the election has been materially affected, as happened in England in a case where two polling booths could not be opened at any time during the day, while others remained closed for half the day and the election was consequently set aside: *vide* Hackney (1874) 2 O'M & H 77. The words "the result of the election has been materially affected" also occur in section 100(1)(c) which provides that the Tribunal should declare an election wholly void if it is of the opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination. In the case of the improper rejection of a nomination it would be practically impossible for the aggrieved candidate to prove positively that the result of the election had been materially affected unless he was able, and was allowed, to call a very large number of persons who have actually voted to depose that they would have voted for him in such number as to cast a majority of votes on which he could have been elected. In England and in Municipal elections in Bombay the normal procedure is to declare an election void in all cases of improper rejection of a nomination as the electorate would not have had the opportunity of deciding whether to vote or not for the particular candidate by reason of the improper rejection of his nomination. As regards the improper acceptance of a nomination, if the particular candidate whose nomination is so accepted happens to secure a majority of votes, then it would be obvious that the result of the election has been materially affected; but in any other case the same difficulty would arise in proving that the result of the election has been otherwise materially affected as in the case of the improper rejection of a nomination. Although we recognize all the difficulties that would arise in such cases, we still find it impossible to construe the clear words used by the legislature in any other manner than their normal import. If there is a defect in the legislation which calls for a remedy, it cannot be corrected by a decision of this Tribunal, and we must leave it to the legislature to consider whether it would not be advisable to put the law in this respect on the same footing as the law prevailing in England at present. So far as section 100 of our Act is concerned the way in which the relevant provisions have been framed by the Indian legislature is such that we cannot but hold that in such cases the onus

remains on the petitioner to show at least a reasonably strong likelihood of the result of the election having been materially affected by the non-compliance with the law or irregularity of which he complains, as when a nomination has been improperly rejected, before he can ask the Tribunal to act under that section.

With these preliminary remarks we proceed to deal with the fourth question before the Tribunal, namely, whether respondent No. 1 and his agents, canvassers, employees and supporters with his or their knowledge and connivance were guilty of the corrupt practices mentioned in para. 7 sub-clauses (a), (b), (c), (d) and (e) of the petition and the particulars Ex. B, attached to the petition, and the further particulars mentioned in the affidavit of the 21st August, 1952.

The allegation made in para. 7 sub-clause (a) is that prior to and at the election respondent No. 1 and/or his agents, canvassers, employees and supporters with his and/or their knowledge and/or connivance extensively practised undue influence and other corrupt practices in furtherance of the prospects of Respondent No. 1. This is so general and sweeping an allegation that we cannot come to any finding on it.

In paragraph 7(c) of the petition it is alleged that prior to and at the election Respondent No. 1 and/or his agents, canvassers, employees and supporters with his and/or their knowledge and/or connivance indulged in intimidation and physical violence on a large scale to coerce the voters to vote for Respondent No. 1 and to refrain from voting for the petitioner, in furtherance of the prospects of respondent No. 1. The only case of intimidation and physical violence against the petitioner's supporters are two. It is alleged that one Karangutkar who had been doing electioneering work for the petitioner was assaulted by certain persons on the night of the 31st December, 1951, three days before the election. Karangutkar has been examined as a witness and has stated that when he was returning home after midnight of the 31st December from the petitioner's office he was assaulted by some persons when he was passing by the J. J. Hospital, that these people said that he had become a leader of the Socialist Party and wanted to bring in socialism, and then kicked and otherwise illtreated him. He became unconscious and was taken to the J. J. Hospital where he remained for two days. Before the Tribunal he has stated that the people who attacked him said that he wanted to defeat their candidate Dr. Divgi, the first respondent, but he has admitted in cross-examination that in his statement to the police made in the hospital immediately after the assault he did not say that the people who had attacked him belonged to respondent No. 1's party, or that they had mentioned respondent No. 1's name. The witness is unable to give the names of any of the persons who had attacked him.

The only other witness on this point is one Muktaji Khilari who says that he had been working for the Socialist Party during the election, that three or four days before the election he had been working in the petitioner's office in connection with the election, that on his way to the petitioner's office he had to pass by a place where a meeting of the Congress Party was being held, and that some three or four 'mavalis' (ruffians), who according to him belonged to the Congress Party, said that he was a worker of the Socialist Party and started beating him. He mentioned the names of two persons, Harchand and Jania Koli, both of whom according to him were mavalis or goondas. There is, however, nothing to show that these men were in any way connected with the first respondent and we have only witness's statement that they belonged to the Congress Party and that they charged him with being a worker of the Socialist Party and opposing the Congress

This evidence is too meagre to justify us in holding that 'intimidation and physical violence on a large scale' had been practised against the petitioner or his supporters, or that such intimidation and violence had been resorted to by the agents, canvassers, employees or supporters of Respondent No. 1. The contention was given up by the learned advocate of the petitioner at the stage of addresses.

In clause 7(d) of the petition it was alleged that prior to and at the election respondent No 1 and/or his agents, canvassers, employees and supporters, with his and/or their knowledge and/or connivance threatened Muslim voters that if they did not vote for respondent No. 1 who was the Congress candidate, their ration cards would be cancelled, their loyalty to the country would be doubted, and they would be expelled to Pakistan by the Congress Government, in furtherence of the prospects of respondent No. 1. Not a single Muhammadan witness has been examined to support this allegation. This allegation was also given up by the learned advocate of the petitioner at the stage of addresses. We must, therefore, hold that it is not proved.

In para. 7(e) of the petition, it is alleged that respondent No. 1 and/or his agents, canvassers, employees and supporters with his and/or their knowledge and/or connivance indulged in exhibiting posters, paintings, and badges, and carrying on other propaganda in favour of respondent No. 1 within the prohibited distance of the Polling Booths in furtherence of the prospects of respondent No. 1.

Beyond only the general allegation made by the petitioner in the petition itself and in his evidence before us, there is no evidence to support this allegation. On the contrary, Mr. Gidvani, Deputy Secretary to the Government of Bombay, Finance Department, who was the Returning Officer for the petitioner's constituency and who was examined by the petitioner himself, has stated that on the day of the election, the petitioner saw him at the Dongri Polling station and told him that the polling agents of the other candidates were trying to canvass voters within the prohibited distance of 100 yards from the Polling Station. Mr. Gidvani told him that if instances were brought to his notice he would take necessary action but that no such actual instance was pointed out to him. The petitioner and one of his witnesses Shaikh Muhammad Alisa have stated that while the polling was going on one Abu Muhammed was sitting on a chair 20 to 25 feet from the polling booth and told voters to cast their votes for respondent No. 1. The petitioner complained of this to the Police Inspector and Abu Muhammed was removed from the place.

This is all the evidence relied on by the petitioner for supporting the allegation that respondent No. 1's supporters carried on canvassing within the prohibited distance from the polling booth. The allegation is not borne out by the Police Officers who have been examined in the case and who were on duty at the polling booths on the election day. A stray charge such as that against Abu Muhammad cannot be regarded as sufficient to prove the general allegation that canvassing was carried on within the prohibited area.

We now come to the main allegation on which the petitioner has relied for showing that corrupt practices were indulged in by the supporters of respondent No. 1 prior to the election. It is in evidence that the "Fourth Party", which was the name adopted by the former Muslim League Party in the Corporation and the Legislatures in Bombay, had come to an understanding with the Congress to support the Congress candidates at the Election and not to put forward their own candidates. It is said that at several meetings held a few days before the date of the election, leaders of the Fourth Party and of the Congress Party made speeches in which they alleged that the Socialist Party was the enemy of Islam, of Muslims and of the Koran, that they were betrayers of and traitors to Islam, that the petitioner had stopped the teaching of the Koran in Municipal Schools in Bombay, that if he were elected he would use his position and influence to stop the teaching of the Koran, that the Socialists did not believe in any religion, and that Socialism would mean the locking up of mosques and religious institutions.

In the further particulars supplied by the petitioner in his affidavit of the 21st August, 1952, it was alleged that at a meeting held in Mutton Street on the 19th December, 1951, one Mr. Bandukwalla, a prominent Bohra citizen and a member of the Bombay Municipal Corporation, had stated that the Mullaji Saheb had promised the support of the Bohra Community to Congress candidates and had issued a *firman* to the effect that all Bohras should vote for the Congress, and that any failure to obey this *firman* would be easily found out when the polling boxes were opened. It is alleged that similar speeches were made at a meeting in Doctor Street on the 27th December by several persons including Salebhai Saheb, brother of the Mullaji Saheb, and also at other meetings held at various places.

We are not satisfied on the evidence that this allegation about the issue of a *firman* or spiritual order by the Mullaji Saheb has been proved, by the petitioner. If any such *firman* had been issued much better evidence should have been available. All that the evidence shows is that the Mullaji Saheb had advised his followers to support the Congress. This according to the authorities cannot amount to such influence as can be objected to as a corrupt practice.

It is alleged by the petitioner that a false charge had been made against him by Respondent No. 1 and by various speakers representing the Fourth Party and the Congress, that when the question of discontinuing the teaching of the Koran in Municipal Schools came up in the Municipal Corporation he refused to support certain Muslim members of the Corporation who were trying to get the proposal thrown out, and told them that such an attitude was not proper in these days, and that if they wanted the Koran to be taught they should see that this was done in the homes of Muslims and in Mosques.

The principal evidence on this point relied on by the respondent is that of Mr. Jillani and Mr. Koreshi. Mr. Jillani who is also a member of the Bombay Municipal Corporation has deposed that at the instance of a member of the Corporation, Mrs. Mody, a proposal to discontinue the teaching of the Koran in Municipal Schools came up before the Schools Committee. A sub-committee of the Schools Committee had reported that such teaching should be discontinued. In this connection he met the petitioner, who was the leader of the Socialist Party in the Corporation, and asked him to see that he and the members of his Party should help them in the matter so that the teaching of the Koran may not be discontinued. According to him a friend of his, Mr. Ismail Koreshi was also present at the interview in the tea room of the Municipal Corporation. He alleges that the petitioner got annoyed with his for raising such questions about mosques and Islam and the Koran even in these days, and said that if they wanted the Koran to be taught they should get this done in mosques or in their own homes. Mr Jillani's story on this point is supported by Mr. Koreshi. It is an admitted fact that this question about the teaching of the Koran in Municipal Schools had been under discussion in the Schools Committee and in its sub-committee ever since 1948. The question finally came up before the Education Committee of the Corporation in November, 1951. At that meeting a member of the Congress Party moved that the consideration of the question be postponed. This was thrown out, there being five Congress members in support of it and six members against it. Another resolution was then moved by a Socialist member, Mr. M. V. Donge that the resolution should be recorded. This was carried, nobody voting against it, with the result that the question was finally disposed of and the teaching of the Koran in Municipal Schools continued. There is no doubt from the evidence that at several meetings it was stated by members of the Fourth Party that the petitioner had not supported Mr. Jillani and other members of the Corporation who had been trying to throw out Mrs. Mody's resolution. To refute this allegation the petitioner relies on the fact, which is undisputed, that it was at the instance of members of his Party, the Socialist Party, that the final resolution of the Corporation was passed as a result of which the teaching of the Koran in Municipal Schools was allowed to continue. But we find it difficult to resist the conclusion that this attitude of the petitioner and other members of his Party in the Corporation was a mere electioneering stunt intended to placate Muslim voters as the elections were then coming on in a few week's time. We have been asked to discard the evidence of Mr. Jillani and Mr. Koreshi on this point on the ground that neither of them as a witness is entitled to much credit. But the evidence which these two witnesses have given on this point appears to us to be borne out by the conduct and writings of the petitioner himself. In a statement published in an Urdu daily called 'Aftab' of the 24th November 1951, a few weeks before the election, the story about the interview between Mr. Jillani and the petitioner Mr Harris in the tea room of the Corporation was given. The petitioner did not deny these specific allegations in his article in the 'Ajmal' dated the 8th December, 1951. when he referred to 'misstatements deliberately made' in regard to the question of stopping the teaching of the Koran in Municipal Schools. His own evidence on the point is not very convincing. His version is that the allegations made against him on this point are false and that when the question of stopping the teaching of the Koran in Municipal Schools was to come up before the Corporation, Mr. Jillani asked him to support him and others of his Party in opposing the proposal, but the petitioner advised him to approach the Congress Party who were in the majority in the Corporation. This is not quite the attitude which one would have expected of the petitioner if he had really been as keen as he now alleges on getting Mrs. Mody's proposal to stop the teaching of the Koran in Municipal Schools thrown out. The petitioner is a member and leader of the Socialist Party. That Party is professedly non-communal and one would not have expected their leader to take an active part on such a question as the teaching of the Koran in Municipal Schools. In a leading article appearing in the petitioner's own paper, the Ajmal of the 29th November, 1951, a few weeks before the election referring to the attitude taken up by the leaders of the Fourth Party, he said that it was amazing that these leaders took such a long time to understand such a clear and simple thing that after the introduction of joint electorates no political party working for one community could win elections. If this really represents the view of the petitioner and his party, their conduct in suddenly proposing in the Schools Committee of the Corporation that Mrs. Mody's proposal to stop the teaching of the Koran in the Municipal Schools should be thrown out, is difficult to understand. The respondent Dr. Divgi has frankly admitted that the proposal of the Congress Party at this meeting to put off consideration of this question was largely influenced by the fact that the elections were very near, and that any other attitude might have alienated Muslim voters. We cannot help thinking that the conduct of the petitioner and his party was equally influenced by the same consideration, and that it was merely in order to secure the support of Muslim voters at the elections that they took up such a strong line on the

question. There was much in our opinion to justify Mr. Jillani in thinking that the petitioner did not support him and the members of his Party when the question about the teaching of the Koran first came up in the School Board's Committee of the Corporation. We are not, therefore, prepared to hold that the statements made by Mr. Jillani at the various meetings that the petitioner did not support Mr. Jillani and other Muslim members of the Corporation on the question of the teaching of the Koran were false. It is true that in some of the statements made by Mr. Jillani in the speeches at the 11 meetings which have been referred to in the petition, it was stated that the petitioner had opposed the teaching of the Koran in Municipal Schools. This was an exaggeration. Mr. Jillani in his evidence has denied that he made any such statements, although he admits having stated that the petitioner did not support Mr. Jillani on the question.

Sub-section (5) of section 123 of the Act refers to the publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact, which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of candidate.

We have already given grounds for holding that statements made by Mr. Jillani on this point were not in our opinion false, or at least that Mr. Jillani had reason to think that they were not false. But there is another reason why in our opinion the allegations made against the petitioner with regard to his attitude on the question of the teaching of the Koran in Municipal Schools cannot come within the purview of sub-section (5) of section 123 of the Act.

The allegations made against the petitioner on this point do not refer to his personal conduct or character. In the Tirhut Division case Shaikh Muhammad Mansoor *Vs.* Maulvi Muhammad Shafi Daudi, Hammond's Election Cases, p. 677, it was held by the Election Tribunal that a distinction must be drawn between criticism of a candidate as a politician or a public man, and statements in relation to his personal character and conduct. Criticism of his public activities, however, ill-mannered, unfair or exaggerated, it may be, is not forbidden. It is only when "the man underneath the politician" is attacked and his honour, integrity or veracity assailed that an election is liable to be set aside. It was held in this case that statements alleging that a certain person was 'a rebel from Islam' and 'a disgrace to Islam', were not such as to offend against the provisions of the Election Law as they were not directed against the man's personal character or conduct but against his activities as a public man. In the Hoshiarpur West Mohamedan Constituency case the same view was taken. (Indian Election cases, Sen & Poddar, p. 399).

There are many decisions of Election Tribunals in England to the same effect. In the Cockermouth Division case (5, O'M. & H. p. 154), it was observed by Mr. Justice Darling—"Now it must be noted that what the Act forbids is this: You shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of the candidate and a false statement of fact which deals with the political position or reputation or action of the candidate."

In our opinion, the allegations made against the petitioner in connection with the resolution in the Corporation about the teaching of the Koran in Municipal Schools relate entirely to his public character and to his conduct as a member of the Municipal Corporation and not to his personal character or conduct. They do not, therefore amount to an offence under section 123 (5) of the Act.

A question arises here as regards the respondent's liability for the allegations made by various speakers belonging to the Fourth Party at the eleven meetings which have been specified in the particulars attached to the petition. All these meetings were held under the auspices of the Fourth Party, the former Muslim League, and were addressed by various speakers belonging to that Party, and especially by Mr. Khwaja Gulam Jillani and Haji Hassanally P. Ebrahim, President of the Bombay Muslim League. We shall deal later on with the specific allegations of the petitioner in connection with the speeches made at these meetings, but the preliminary question which we have to decide is whether, and if so, how far, the respondent, Dr. Divgi is liable for the allegations made in these speeches. The petitioner's contention is that shortly before the elections of 1952, a pact was

entered into by the Fourth Party and the representatives of the Congress, as a result of which the Fourth Party undertook not to put up its own candidates at the elections and to support the Congress candidates, and in return the Congress undertook not to oppose the Fourth Party candidates in the Municipal elections. The existence of such a pact has been flatly denied by Haji Hassanally P. Ebrahim, Leader of the Fourth Party and by Khwaja Gulam Jillani, a prominent member of the Fourth Party and also a member of the Bombay Municipal Corporation. It has also been denied by Mr. S. K. Patil, President of the Bombay Provincial Congress Committee and by the respondent. It is admitted that at the elections in January, 1952, the Fourth Party supported the Congress candidates, but the explanation given on this point by Haji Hassanally P. Ebrahim is that prior to the elections of 1952, they had been invited to join the Congress and to liquidate their own Party. They refused to do so as they did not agree with the Congress programme in its entirety, but as they considered that, owing to the way in which the constituencies had been framed, the chances of any of their candidates getting elected were very small, they decided to support the Congress. According to him they did not consider the Congress programme as in every way good. They were alive to that they considered its defects and drawbacks, but taking a general view of the political situation, and in the best interests of the country and of their party, they decided to support the Congress without making any bargain with it. According to him before coming to such a decision they had considered alternative schemes of forming a coalition with other Parties, but ultimately came to the conclusion that no other Party was strong enough to form a stable government. This evidence is borne out by a statement, exhibit 27, issued by the leader of the Fourth Party, Mr. Abdul Kadir Khan, the Deputy Leader, Mr. Abdul Kadar Shaikh and Haji Hassanally P. Ebrahim. In this statement also it is mentioned they had had discussions with the Congress Election Committee about their line of action in the elections, that they were asked to fight the elections on the Congress ticket, but that they flatly refused to do so, as that would have meant liquidating their Party; that after a full consideration of the political situation and of their chances of success in the elections, they had decided that they had no other alternative but to support the Congress, though this decision did not mean that their Party was joining the Congress or advising their followers to join it.

We see no reason to disbelieve the evidence of Mr. Jillani and Haji Hassanally P. Ebrahim on this point supported as it is by the manifesto issued by the Party prior to the elections and by their subsequent conduct during and after the elections. This evidence makes it clear that the Fourth Party definitely declined to join the Congress or to adopt its programme in its entirety, and that they realised and openly announced that on some points they did not agree with the ideology of the Congress Party and considered it defective. The respondent, who is a member of the Congress Party and elected on the Congress ticket cannot, therefore, be considered as having at any time accepted the policy and programme of the Fourth Party. The question how far a candidate at an election can be held liable for the policy and programme of a Party whose meetings he has attended is not always an easy one to answer. There is no doubt that three out of the eleven meetings which are mentioned in the particulars Ex. B attached to the petition were attended by the respondent, Dr. Divgi. The proceedings at all these meetings which were held by the Fourth Party were conducted in Urdu. The respondent has stated, and we are prepared to accept that statement, that he himself does not know Urdu and that he was not able to follow the speeches at the meetings which he attended, and that he attended the meetings merely as a matter of courtesy, since the Fourth Party was supporting his candidature. The question how far a candidate is bound by statements made at or by corrupt practices indulged in by a political party whose meetings he has attended has been very fully considered in the decision in the St. George's Division of the Borough of Tower Hamlets (5 O'M & H. P. 89—97) and the observations of Mr. Baron Pollock in that case are worth quoting. He said:

> "In determining the question how far a candidate, by attending the meetings of a political association makes it or any of its officers his agents, it is necessary first to enquire what is the object and character of the association. If, for instance, its object be simply to secure the election to Parliament of a particular individual, it would be difficult, if not impossible for a candidate to take part in its operations without becoming responsible for its acts during an election. Again, if the object of an association be to procure the election of some candidate professing the political views of one of the two great parties which are supposed to divide the opinions entertained by the whole electorate of the country, a candidate, if during an election he attended its meetings and availed himself of the assistance of the association would probably be held so to sanction the association acting on his behalf as to constitute the

officers of the association as his agents. Where, however, the object of the association is merely to advocate the views and interests of a particular portion of the community, as where a temperance society forms local branches to uphold the closing of public houses or local option, and a brewers' or a publicans' association forms branches to support the opposite views, or where Irish Home Rule is advocated by one society and Unionist views by another, the position is different, and a candidate who is invited by a branch association within his division to attend their meeting to hear their views and to explain his own, does not by so attending necessarily associate himself with their organization so as to make any of their officers his agents."

The respondent Dr. Divgi clearly was not a member of the Fourth Party. It has been stated, and the fact has not been denied, that the programme and policy of the Fourth Party were different from that of the respondent's Party, the Congress. The meetings which were held, and three of which the respondent attended, were not all within his constituency or intended to support his candidature. Seven out of the 11 were in neighbouring constituencies or in the Parliamentary constituency of which the respondent's constituency formed only a small part. Beyond attending the meetings as a silent spectator, the respondent took no part in them. In the circumstances we are of the opinion that by merely attending meetings the respondent did not necessarily associate himself with or put himself in the hands of the Fourth Party, under whose auspices the meetings were held, so as to make that Party or its officers or speakers his agents.

A similar view was taken by Mr. Justice Denman in the Bewdley case (3 O'M & H. P. 145). In discussing the position of political associations and the liability of candidates, he said:

> "There may be doubtless in a borough a political association, existing for the purpose of a political party, advocating the cause of a particular candidate, and largely contributing to his success, yet in no privity with the candidate or his agents, an independent agency acting in its own behalf. To say that the candidate should be responsible for the corrupt acts of any member of that association, however, active would be unjust, against commonsense and opposed to law."

That appears to us to be the position in the present case. Dr. Divgi's candidature was undoubtedly supported by the Fourth Party, and he attended some of their meetings, but the policy of that party was different in many respects from that of his party. They had expressly refused after careful consideration to join his party, though they had decided for reasons of their own to support the Congress candidates at that particular election. It was urged on behalf of the petitioner that since Dr. Divgi attended three of the meetings, and three other meetings were attended by Mr. S. K. Patil, President of the Bombay Provincial Congress Committee, and Dr. Divgi did not expressly dissociate himself from what was said at the meetings, he must be held to have agreed with the speeches made, and to be liable for any corrupt practices which may have been committed at these meetings. We are not prepared to accept this view. We accept Dr. Divgi's statement that he was not able to understand and follow what was said in Urdu or Hindustani at those meetings. It was suggested that since Dr. Divgi had been living and practising in Bombay in a Muhammaden locality for many years he must be assumed to understand Urdu. But being able to understand or to speak a few words of ordinary daily usage in Urdu is not the same thing as being able to understand long speeches delivered rapidly in Urdu. We hold, therefore, that the respondent cannot be held liable for any corrupt practices, even if any were committed, at these meetings. He cannot, therefore, be held liable for the allegations made against the petitioner with regard to his conduct in the Corporation in connection with the question of the teaching of the Koran in Municipal Schools.

Under section 124, sub-section (5), the systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as the National Flag and the national emblem, for the furtherence of the prospects of a candidate's election amount to a corrupt practice.

Before we proceed to discuss how far any offence can be said to have been committed under this section, it is necessary to consider the meaning and implications of this section. The question is not an easy one. We have no guidance on this point from previous decisions of Indian Election Tribunals or of election Tribunals in England. There is no corresponding provision in the election law of England, nor was there any in the Indian law prior to the enactment of the present Act. It

is contended for the petitioner that there is evidence on the record to show that at some or all of the elections [illegible] referred to in the petition, references were made to the [illegible] as opposed to the teaching of the Koran, that he [illegible] tenets of Islam. It is argued that these references to [illegible] speeches within the orbit of section 124 (5), and [illegible] to vote or refrain from voting on grounds [illegible] would in our opinion be much too wide, and [illegible] an extremely hazardous operation.

[illegible] has to be construed not by itself but in the light of the Constitution of India and the intention of its framers. Article 13(2) of the Constitution provides that the State, including the Parliament of India, shall not make any law which takes away or abridges the fundamental rights granted by Part III of the Constitution while article 327 of the Constitution under which the Representation of the People Act of 1951, with which we are concerned has been enacted expressly makes the power of Parliament to enact such legislation subject to the provisions of the Constitution. It is, therefore, necessary to construe the provisions of the Representation of the People Act in such a manner as to bring them into harmony with the intention of the framers of the constitution, especially with regard to the fundamental rights provided for by Part III.

The first and one of the most important fundamental rights conferred by Part III is the right to freedom of speech and expression granted by Art. 19(1)(a), and that right must be taken as being of special importance at times like those of elections when without such freedom there can be no expectation of the free and fair expression of the will of the people in electing representatives of their own choosing as legislators. Article 19(2) of the Constitution indicates the limits of the general right of freedom of speech and expression which according to the intention of the framers of the Constitution can be legitimately imposed *viz.* that such freedom should not amoutn to libel, slander, defamation or contempt of court, or offend against decency or morality or undermine the security of or tend to overthrow the State. Article 25 (1) of the Constitution provides *inter alia* for the right of all citizens freely to profess, practise and propagate religion; while another fundamental right expressly conferred by the Constitution is that given by Article 29(1) which provides that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Under the circumstances, in considering the relevant words of section 124(5) of the Representation of the People Act which makes it a corrupt practice if *inter alia* there is a systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion for the furtherance of the prospects of a candidate's election, and thus to that extent prevents freedom of speech and expression during times of elections, we must so construe that provision as to make it conform with the provisions of the Constitution with regard to the fundamental rights granted thereby, and the intention of the framers of the Constitution to grant the maximum freedom of speech and expression allowable, and not to curtail that right unless we feel that such curtailment is not only intended by the legislature which has framed the particular piece of legislation under consideration, but also that it is in consonance with the provisions of the constitution and especially the fundamental rights granted thereby to which we have referred.

The Constitution itself contains an indication of other limits which might be regarded as being within the purview of the intention of the framers in fixing the limits to the right of freedom of speech and expression granted in general words by Article 19(1). Articles 15 and 16 provide against discrimination between citizens "on grounds only of religion, race, caste, sex, place of birth or any of them" in order to impose any disability, liability, restriction or condition with regard to access to shops, etc. and the use of public amenities like wells etc , and also with regard to any employment of office of the state. The discrimination provided against by the Constitution is one on grounds *only* of religion, race, etc., and not other grounds which are required to be considered or have been considered in making any discrimination between citizens. It is, therefore, in the same spirit that the legislature seems to have enacted section 124(5) of the Representaton of the People Act to provide for any discrimination being sought to be made by appealing to voters *only* on the grounds of caste, race, community or religion, so that a systematic appeal to voters to elect a particular candidate or not to elect him merely because he happens to profess or not to profess a particular religion would be a discrimination against his election to an important position in the State as a legislator, and would be a discrimination against the spirit of the fundamental rights. On the other hand, any such appeal not merely on the ground of caste, race, community or religion of the candidate but on the

ground of his public expression of any opinion or public conduct which according to the speaker might or might not show him to be a person likely as a legislator to look after the interests of the people as a whole or of a particular section of the people, cannot be held to be within the mischief of section 124(5) of the Act, so as to amount to a corrupt practice, as any such restriction appears not to be within the contemplation of the framers of the Constitution, and would, therefore, be repugnant to the fundamental right of freedom of speech and expression expressly granted by the Constitution to all citizens.

The language of section 124(5) is very wide and refers to a systematic appeal to vote or refrain from voting on grounds of religion for the furtherance of the prospects of a candidate's election. The question we have to consider is what meaning should be attached to the words 'on grounds of religion'. Would the appeal to voters not to vote for the petitioner because he or his party—the Socialist Party, were opposed to the Koran or to Islam or to religion generally, come within the mischief of the section? In our view the words 'on grounds of religion' have been too broadly used without sufficient qualification, and we do not think it could have been the intention of the legislature when this clause was enacted to make any reference to religion in an appeal to voters at an election a corrupt practice. There may be occasions, for instance, when a measure of religious or social reform is before the legislature when a reference to religion or to a candidate's views on religion may be quite legitimate. We have tried to ascertain both from the history of this particular piece of legislation, and on general canons of judicial construction, what the intention of the legislature in the present case could have been. We find that Section 124(5) as it stood in the bill which afterwards became the Representation of the People Act, 1951, did not contain the words "the systematic appeal to vote or refrain from voting on grounds of caste, race community or religion", with which we are at present concerned. The clause as it then stood merely referred to the 'use of or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election.' The words 'the systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion' were inserted at the second reading of the bill on the motion of the Law Member. As far as we can see from the proceedings of the legislature no reason was given why these words were being inserted. As we have observed similar words occur repeatedly in the Constitution of India, one of the main objects of which was to do away with all discrimination based *merely* on caste, race, sex or religion. We have already referred to Articles 15, 16 and 29 of the Constitution. Article 325 provides that there shall be one general electoral roll for every constituency and no person shall be ineligible for inclusion in any such roll. or claim to be included in any special electoral roll for any such constituency, on grounds *only* of religion, race, caste, sex or any of them.

When we examine section 124(5) of the Representation of the People Act in the light of these provisions of the Constitution of India we are, we think, justified in assuming that the object of section 124(5) of the Representation of the People Act was to introduce into it the principle of non-discrimination between different castes, communities and religions, which was emphatically laid down in the Constitution of India. Section 124(5) has merely carried into effect in the sphere of the law of elections the provisions of Articles 15, 16, 29 and 325 of the Constitution of India. The mischief which section 124(5) was aimed at preventing was the voting for or against a candidate only because of his religion, caste, race or community and if that was, as we apprehend it was, the real object of the section, we must put a restrictive interpretation upon the unduly wide terms of section 124(5). As we have already pointed out to put too literal a construction upon these words would undoubtedly in certain circumstances lead to hardship. To arrive at the real meaning of any piece of legislation, it is necessary to have a proper conception of the aims, scope and objects of the ligislation (Maxwell—Interpretation of Statutes, 9th ed., p. 22). In particular we have to see what was the mischief or defect which the law was intended to provide against. When we examine section 124(5) from this point of view, it seems to us that the section was intended to prevent attacks made on a candidate, or appeals made for a candidate, only on the ground of his religion, or attacks made only on the principles of his religion. It must have beeen for this reason that the words added in sub-clause (5) of section 124 in the course of the second reading of the bill followed very closely the language of the various Articles of the Constitution of India, to which we have referred.

The words used in a piece of legislation sometimes express more than what was intended by the legislature if the words are literally interpreted, and it is a well established canon of interpretation that all words if they be general and not express and precise, are to be restricted to the fitness of the matter. (Maxwell—Interpretation of Statutes—9th ed., p. 63). We have shown above that the scope

and object of section 124(5) was to provide in the field of electoral law those safeguards which the Constitution of India provided for in the Articles to which we have referred. Looking from this point of view we feel that it could not have been the intention of the Legislature by this section to prevent all reference to religion in elections speeches, especially when the right to conserve the culture of a section is expressly conceded in art. 29(1) of the Constitution. The real intention of this section, in our opinion, was to prevent attacks on a particular religion of a candidate only, on the ground that he is a follower of a particular religion. So interpreted an attack on the petitioner on the ground that in his attitude on the question of the teaching of the Koran in Municipal Schools he took a view which was against the Koran, or against Islam, or against religion in general, would not fall within the purview of section 124(5). It would in our opinion be open to a person to tell Muslim voters that in view of the attitude which the petitioner had taken, or which the speaker believed he had taken on the question of the teaching of the Koran, he was not a person who could properly represent or further their interests.

With those preliminary observations we proceed now to deal with the specific allegations which have been made as regards the speeches at the eleven meetings which are referred to in the petition.

In the particulars attached to the petition and in the further particulars supplied by the petitioner on the 21st August, 1952, he alleged that at the eleven meetings referred to, Khwaja Gulam Jillani, Mr. Fitrat, Mr. Nuruddin Bandukwalla, Haji Hasanally p. Ebrahim, Mr Hafizkha, Mr. A. K. Shaikh and others made speeches to the effect complained of by him in his petition. In the particulars given in the petition under paragraph 7(b), it is stated that at the eleven meetings mentioned in the petition the Fourth Party Leaders as well as Congress leaders and candidates addressed the electorate to the effect that—

(a) The Socialist Party is the enemy of the Koran, of Islam and of the Muslims;

(c) The betrayers of and traitors to Islam (The Socialists) to want to finish the Fourth Party and disrupt Muslim solidarity;

(e) Mr. Harris has stopped the teaching of the Koran in Municipal Schools in Bombay and now comes and asks Muslims to vote for him. If he is elected he would use his public position and influence to stop the teaching of the Koran;

(f) Socialists do not believe in any religion and Socialism would mean locking of the mosques and religious institutions.

It is significant that except in clause (e) with regard to the teaching of the Koran in Municipal Schools, which we have already dealt with, all the allegations made in the petition are not against the petitioner personally, but against the Party to which he belongs, the Socialist Party. This shows that the grievance of the Fourth Party was against the Socialist Party as a whole and its policy and not against the petitioner in his personal capacity, and this is borne out by the evidence about what was said at the various meetings.

Out of the 11 meetings mentioned in the particulars attached to the petition, four, namely, Nos. 4, 7, 10 and 11 at the B. T. T. Blocks, Princess Building, Piru Lane and Nishanpada, were held in the petitioner's own constituency. A significant fact about the evidence adduced by the petitioner with regard to all these meetings is that in the oral evidence which was led before us more than a year after the meetings had been held, specific evidence has been given by some of the witnesses that the objectionable allegations as regards being opposed to the teaching of the Koran or being against Islam or the Muslims were made against the petitioner personally, whereas in practically all the contemporaneous reports which appeared in the press about the meetings such allegations have been made not against the petitioner personally but only against his Party—The Socialist Party. Mr. S. S. Desnavi who attended a meeting near the B.I.T. Blocks has stated that Mr. Jillani in his speech referred to the Socialist Party and to Mr. Harris as opposed to the teaching of the Koran. Another witness with regard the same meeting Mr. Meher Muhammad Khan Shihab says that he heard Mr. Jillani saying that the petitioner was responsible for the discontinuance of the teaching of the Koran in the Municipality and that the Socialist Party was against Muslims and the Koran. Munir Ahmed Shaikh says that Mr. Jillani said at the B.I.T. Blocks meeting that the Socialists were against religion and against the Koran and that the petitioner had opposed the teaching of the Koran in the Municipality. The same witness says that at the meeting near the Princess Building, Mr. Jillani referred to the Koran story and then said that the Socialists were against religion. With regard to the meeting at Erskine Road, Null Bazar he says that Mr. Jillani

stated that the Socialists were against religion and against Muslims. He also repeated the Koran Story. Still another witness Muhammad H. Izazi says with regard to the meeting at the B. I. T. Blocks that Jillani delivered a speech in which he referred to the petitioner's attitude in the Municipality with regard to the teaching of the Koran. When we turn to the contemporaneous reports of these meetings in the press we find in "The Ittehad" of the 27th December (Exhibit 13) the day after the meeting a summary of Mr. Jillani's speech giving certain allegations made against the Socialists but there is no reference whatever to the petitioner. In the report about the same meeting in the Hindustan daily of the 27th December (Ex. 17) Jillani is reported to have made allegations against the Socialists as playing an opportunist role, but there is no reference to the petitioner personally. In the report of the same meeting in the Khilafat of the 27th December we find a reference to the speech of Mr. Fitrat, but there is no reference whatever to the petitioner. In all the three newspaper reports with regard to the meeting which appeared the day after the meeting there is no allegation that Mr. Jillani or anybody else described the petitioner as having been opposed to the Koran or to Islam or to religion generally. With regard to the meeting near the Princess Building on the 28th December, 1951, two witnesses have been examined, Munir Ahmed and Tasdir Ahmed. Munir Ahmed says that Jillani spoke at the meeting and after making a reference to the Koran Story said that the Socialists were against religion. The witness says the same thing with regard to Mr. Jillani's speech at the Erskine Road Meeting. Tasdir Ahmed says with regard to the Princess Building meeting that Mr. Jillani said that the Socialists were enemies of Islam and were against religion and did not protect the interests of Muslims. He also referred to the petitioner's conduct in connection with the Koran incident in the Municipality. The only newspaper report with regard to this meeting is from the Hindustan (Ex. 20) which mentions that Mr. Jillani spoke at the meeting, but gives no details of his speech.

With regard to the meeting in Piru lane—meeting No. 10 on the 24th December, 1951, we have no evidence whatever either oral or documentary. With regard to the fourth meeting in the petitioner's constituency, meeting No. 11 at Nishanpada on the 22nd of December, 1951, no witness has been examined. Mr. Jillani did not speak at that meeting. There are three newspaper reports of the speeches made at this meeting but they refer only to the Socialists as not being 'believers in God' but contain no allegation against the petitioner. Thus at all the four meetings held in the constituency of the respondent, there were no allegations that the petitioner was against the Koran or against Islam or against religion.

The next set of meetings includes those held on the 27th December in Doctor Street; on the 7th December, 1951, in Null Bazar and on the 1st January 1952 at Erskine Road, Null Bazar, meetings Nos. 6, 1 and 9 in the list given in the particulars attached to the petition. These meetings were held in the parliamentary constituency of which the petitioner's constituency formed a small part. The speeches objected to were those of Khwaja Gulam Jillani and Haji Hasanally P. Ebrahim who spoke at the meetings, in Doctor Street and Null Bazar, and Mr. S. K. Patil and Bandukwalla who spoke at the meeting in Doctor Street. As regards Bandukwalla there is no evidence even to suggest that he made any objectionable statements except with regard to the Mullajis firman; while as regards Mr. Patil and Haji Hasanally P. Ebrahim there is no suggestion in the evidence that they said anything against the petitioner personally. Only one witness Ajmat Husen has been examined with regard to the meeting in Doctor Street. He is also a witness with regard to the meeting at Erskine Road, Null Bazar. He said that at both these meetings Mr. Jillani said that the Socialists were enemies of Mussalmans and of Islam and that no votes should, therefore, be given to them. He further stated that at the meeting at Null Bazar on the 7th December, 1951, Mr. Jillani compared the petitioner to Yazid, one of the betrayers of Iman Hussain and said that the petitioner had stopped the teaching of the Koran in municipal Schools. In the meeting at Erskine Road, Null Bazar, on the 1st of January, 1952, Mr. Jillani is reported to have stated that Socialists were the enemies of Islam and of the Muslims and that no votes should be given to them, and that the petitioner was also an enemy of Islam and of Mussalmans, because he wanted to stop the teaching of the Koran. A report of Mr. Jillani's speech at this meeting appeared in the Ittehad of the 9th December, 1951 (Exhibit DD). That report does not contain any allegation that the petitioner was an enemy of Islam or of the Koran or 8 Muslims though it contains a reference to the petitioner's conduct in connection with the Koran incident in the Municipal Corporation. The speech of Haji Hassanally P. Ebrahim as reported in the Ex. DD also does not contain any reference to the petitioner as being an enemy of Islam or of the Koran or of Muslims. With regard to the meeting at Null Bazar on the 1st January, 1952, there is also another witness Munir Ahmed This witness says that Mr. Jillani said at this meeting that the Socialists were against religion.

With regard to Mr. S. K. Patil who spoke at the Doctor Street meeting and at the Erskine Road meeting the two witneses—Barodawala and Mohimutulla do not allege that he said anything against the petitioner personally. According to Mohimutulla he said that the Socialists were without faith and without religion (be 'din and la' mahjab). These words are also attributed to Mr. Patil in the report of the Doctor Street speech given in the Ittehad of the 29th December, 1951. Mr. Patil has denied having used these words and says that he does not know what they mean. In any case the words which according to the evidence were used by him, referred not to the petitioner personally but to the Socialist Party. In the report of the same speech appearing in another Urdu paper the Hindustan daily of the 29th December, 1951, Mr. Patil is also reported as having said that the Socialists were without religion, but there is nothing in that report of the speech against the petitioner personally.

There is thus in our opinion no reliable evidence to support the statement that at these meetings systematic allegations were made against the petitioner personally to the effect that he was either against religion or against Islam or against the Koran. Practically all the allegations were made only against the Socialist Party as such.

We come now to the last set of meetings, meetings Nos. 2, 8, 5 and 3 mentioned in the list of particulars (Ex. B) attached to the petition. These meetings were held at Mohamedan Street, Nagdevi Street, New Kazi Street and Mutton Street in the neighbouring assembly constituency. Khawaja Gulam Jillani, Haji Hassanally P. Ebrahim and Mr. Nuruddin Bandukwala are alleged to have made speeches at some of these meetings. According to witness Muhammad Yusuf Post Muhammad, Mr. Jillani said at the Mohamedan Street meeting that votes should not be given to the Socialists because they were against Muslims and that Mr. Harris was their leader. He then referred to his talk with the petitioner about the teaching of the Koran in Municipal Schools. Another witness Muhammad Usman, Muhammad Shafi also says that at the Mohamedan Street meeting Mr. Jillani said that the Socialists were against Muslims and that when the question of the Koran teaching in the Municipal Schools came up in the Municipality, the Socialists voted against it. The only witness who deposes to anything said against the petitioner at the meeting is Muhammad Kutubuddin Siddiqui who says that at the Mohamedan Street meeting Mr. Jillani stated that the Socialist Party and especially Mr. Harris were enemies of Islam and of Muslims and were persons who had fallen from Islam. He also says that Mr. Jillani referred to the petitioner's conduct in connection with the Koran incident in the Municipality. The same witness says that at the Mutton Street meeting also Mr. Jillani made a speech to the same effect and especially referred to the petitioner. There are certain newspaper reports with regard to these meetings. The Hindustan daily (Ex. BB) of the 19th December, 1951, reporting the meeting at Mohamedan Street, Meeting No. 2 says that Mr. Jillani referred to the petitioner as having opposed the teaching of the Koran in Municipal Schools. With regard to the Mutton Street Meeting, Meeting No. 3, the Hindustan of the 22nd December, 1951, contains a report that Mr. Jillani said that the Socialists had taken part in stopping the teaching of the Koran. The Hindustan of the 26th December, 1951, reporting the meeting in New Kazi Street, meeting No. 5, referred to Mr. Harris as having opposed the teaching of the Koran. The report of Mr. Jillani's speech at the Nagdevi Street meeting appearing in the Hindustan of the 29th December (Ex. 19) contains no allegations against the petitioner personally.

Thus the reports of the speeches made by Mr. Jillani and the other persons at the eleven meetings referred to in the petition do not contain remarks about the petitioner being opposed to the Koran or to Islam or to Muslims which are alleged against him. It is true that some of the witnesses who have been examined say that Mr. Jillani made these remarks, but we are not prepared to accept the statements of these witnesses as trustworthy. They were deposing from memory to speeches which were made a year ago, and the remarks against the petitioner attributed by these witnesses to Mr. Jillani do not appear in the contemporary newspaper reports of these speeches. These reports would be much more likely to contain a true account of the speeches than the oral evidence of witnesses given a year later, when they could only speak from memory of the general impression left on their minds by the speeches.

We, therefore, hold that the petitioner has not proved that any systematic propaganda that he was against the Koran or against Islam or against Muslims was carried on against him personally. It is proved, however, that allegations were made that the Socialists Party was the enemy of the Koran and of Islam and of Muslims. In our opinion making an allegation of this sort against a political party would not in any event amount to a corrupt practice within the meaning of Section 123(5) of the Act. That section refers to the making by a candidate or other

person with his or his agent's connivance of any statement which the maker does not believe to be true in relation to the personal character or conduct of any candidate. We have also held that such remarks would not come under section 124(5) of the Act.

The statement with regard to the petitioner's attitude in connection wtih the teaching of the Koran in Municipal Schools in our opinion is a statement about the petitioner's public character and conduct as a member of the Municipal Corporation and does not amount to a corrupt practice within the meaning of section 123(5). The preference to the petitioner's attitude in connection with the Koran incident in the Municipality and to his being against the Koran or against Islam or against religion generally, would not, amount to a systematic appeal to vote or refrain from voting for the petitioner merely on the ground of his religion. There is very little evidence to show that such attacks were made against the petitioner personally; the attacks were against his party, the Socialist Party. To the very limited extent to which such attacks were made against the petitioner they cannot be said to amount to a systematic appeal to vote against the petitioner on the ground of his religion.

We hold that the petitioner has failed to prove that any corrupt practices were indulged in or committed by or with the connivance of respondent No. 1 or his agents, which would justify us in setting aside the election of respondent No. 1 or declaring the whole election to be void.

We also record a finding accordingly under section 99(1) (a) (i).

The petition must, therefore, be dismissed.

We have given anxious consideration to the question of costs. Although the petitioner has failed to prove his allegations of corrupt practice we feel that there was much in the election propaganda of the Fourth Party in supporting Congress candidates which the petitioner might have *bona fide* considered objectionable, especially as section 124(5) is an entirely new provision introduced by our legislature on which there were no previous decisions of tribunals to afford the parties any guidance.

Under the circumstances, we consider that the fairest order will be to direct that the parties should bear their own costs.

We have derived much assistance from the very able manner in which the learned advocates on both sides have placed their cases before us, and places on record our appreciation of the help which we have received from them.

[No. 19/76/52-Elec.III.]

(Sd.) N. J. WADIA.
(Sd.) M. D. LALKAKA.
(Sd.) G. P. MURDESHWAR.

16-1-53.

P. S. SUBRAMANIAN,
Officer on Special Duty.

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